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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON – PORTLAND DIVISION

CALISTA ENTERPRISES LTD.,
a Republic of Seychelles company,

Plaintiff,

- v. -

TENZA TRADING LTD.,
a Cyprus company,

Defendant.

Case No. 3:13-cv-01045-SI

**CALISTA ENTERPRISES LTD.'S
MOTION FOR LEAVE TO AMEND
COMPLAINT TO CORRECT CITATION
IN HEADING**

TENZA TRADING LTD.,
a Cyprus company,

Counterclaim Plaintiff,

- v. -

CALISTA ENTERPRISES LTD.,
a Republic of Seychelles company, and
ALEXANDER ZHUKOV,
a Czechoslovakian citizen,

Counterclaim Defendants.

LR 7-1 CERTIFICATION

The undersigned counsel for Calista Enterprises, Ltd. certifies that counsel for Calista conferred in good faith with counsel for Tenza Trading Ltd. by telephone on July 1, 2014. The parties were unable to resolve the issues raised in this motion, and the Court's consideration of these issues is respectfully requested.

MOTION FOR LEAVE TO AMEND COMPLAINT TO CORRECT CITATION IN HEADING

Pursuant to Fed. R. Civ. P. 15(a), Plaintiff Calista Enterprises, Ltd. ("Calista") respectfully moves for leave to file an amended complaint, which will correct a single mis-cited statute in a heading of a Count in the Complaint. The proposed Amended Complaint is attached hereto as Exhibit 1. The proposed amendment makes no substantive changes other than to correctly cite the applicable chapter under which Count I of the Complaint was brought. In support of this Motion, Calista states as follows.

1. The heading for Count I of the Complaint contains an obvious scrivener's error.

The existing heading reads “Anticybersquatting Consumer Protection Act (15 U.S.C. § 1125(2)(D)(5)).” The section number of the Act, however, should read “§ 1114(2)(D)(v),” not “§ 1125(2)(D)(5).” *See, also*, Declaration of Matthew Shayefar, attached hereto as Exhibit 2.

2. The scrivener’s error is obvious to any observer, inasmuch as Section 1125(2)(D)(5) ***does not actually exist***. Moreover the facts alleged and relief sought in the complaint (as well as all of the discovery taken by the parties) clearly demonstrates that the parties understood Calista’s true intent in Count I was to state a cause of action under Section 1114(2)(D)(v).

3. Section 1114(2)(D)(v) provides that:

A domain name registrant whose domain name has been suspended, disabled, or transferred under a policy described under clause (ii)(II) may, upon notice to the mark owner, file a civil action to establish that the registration or use of the domain name by such registrant is not unlawful under this chapter. The court may grant injunctive relief to the domain name registrant, including the reactivation of the domain name or transfer of the domain name to the domain name registrant.

This section provides a domain name registrant with a cause of action upon the rendering of an adverse UDRP decision, which was precisely the impetus behind Calista’s initiation of the present case. *See, e.g., Storey v. Cello Holdings, L.L.C.*, 347 F.3d 370, 383 (2d Cir. 2003) (adverse UDRP decision triggering event for suit under §1114(2)(D)(v)); *Barcelona.com, Inc. v. Excelentísimo Ayuntamiento de Barcelona*, 330 F.3d 617, 625 (4th Cir. 2003) (holding that UDRP decision was triggering event for action under §1114(2)(D)(v) and explaining that, “when a trademark owner overreaches in exercising rights under the ACPA, he ‘reverse hijacks’ the domain name from the domain-name registrant. Thus, § 1114(2)(D)(v), enacted to protect domain-name registrants against overreaching trademark owners, may be referred to as the ‘reverse domain name hijacking’ provision.”).

4. Section 1125, entitled “False designations of origin, false descriptions, and dilution forbidden,” is simply unrelated to the facts as alleged or remedies sought by Calista in its complaint. And, again, the subsection cited in the erroneous heading, “(2)(D)(5),” simply does not exist in Section 1125.

5. “Federal Rule of Civil Procedure 15(a) provides that the court should freely give leave [to amend] when justice so requires. . . .The court should apply the rule’s ‘policy of favoring amendments . . . with extreme liberality.’” *Schultz v. Wells Fargo Bank, Nat’l Ass’n*, 2013 U.S. Dist. LEXIS 62769 (D. Or. Apr. 30, 2013) (internal citations omitted).

6. Calista’s proposed amendment, which changes nothing but the incorrect section number contained in the heading to Count I of the complaint will not prejudice any party. The facts as alleged in Calista’s complaint more than met the pleading requirements of Fed. R. Civ. P. 8(a)(2), which requires but a “a short and plain statement of the claim showing that the pleader is entitled to relief.” *See, e.g., Brinkman v. IRS*, 2013 U.S. Dist. LEXIS 140227 (D. Or. 2013). The facts as alleged in the original complaint – and which are not changing at all in the amended complaint – gave Tenza full and fair notice of the basis of Calista’s claims.

For the reasons stated hereinabove, Plaintiff Calista Enterprises, Inc. respectfully requests that the Court allow its motion to file an amended complaint.

Dated: July 2, 2014

Respectfully Submitted,
Plaintiff Calista Enterprises Ltd.
By its Attorneys,

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